IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Company Appeal No.1 of 2007

Judgment reserved on:24.7.2007.

Date of decision: Ist August, 2007.

M/s.Silverlines Motors Pvt. Ltd. …..Appellant

-Versus-

State Bank of India ….Respondent

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? yes

For the Appellant: Mr.Ankush Sood, Advocate.

For Respondent: Mr.K.D.Sood, Advocate.

Deepak Gupta, J.

This Company Appeal under Section 10-F of the Companies Act, 1956 (hereinafter referred to as the Act) is directed against the order dated 12.1.2007 passed by the Company Law Board (CLB) in Company Petition No.487/141/2006-CLB.

Briefly stated, the facts of the case are that the appellant had raised a loan from the respondent-Bank. The appellant had created a charge on his properties as per the agreement entered into with the bank. It was a duty of the appellant Company in terms of Section 125 of the Act to get the charge registered with the Registrar of Companies. Non-registration of a charge is an offence punishable under Section 142 of the Act. According to the Bank since the Company was not getting the

charge registered it approached the CLB for registration of the charge in terms of Section 134 of the Act. Section 134 of the Act reads as follows:

> "**134.Duty of company as regards registration and right of interested party.-**(1)It shall be the duty of a company to file with the Registrar for registration the particulars of every charge created by the company, and of every issue of debentures of a series, requiring registration under this Part; but registration of any such charge may also be effected on the application of any person interested therein.
>
> (2)where registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration."

A perusal of this Section shows that if the Company refuses to get the charge registered with the Registrar of Companies the same can be registered on the application of any person interested therein. The Bank was definitely an interested party and could have got the charge registered. The bank moved an application before the CLB. It also applied for condonation of delay in getting the charge registered. Before doing so the Bank also asked the appellant to get the charge registered and also to move an application for condonation of delay. Various letters were sent during the year 2006. The only response give by the appellant was on 18th January, 2007 wherein it stated that the delay in filing the charge is due to the fault of the Bank. The CLB without issuing notices to the appellant accepted the application of the Bank and the following order was passed:

> "Upon the petition of the petitioner company above named, praying condonation of delay and extension of time under section 141 of the Companies Act, 1956 which was placed before this

Bench for final disposal pursuant to the Company Law Board Regulation, 1991 called upon for hearing and final disposal by this Bench on 05/1.2007.

And upon perusing the said petition and upon perusing the letter No.SRNAO2739282 dated 4/8/2006 of the Registrar of Companies, Punjab, H.P. & Chandigarh that the particulars of charge created on 31.5.2005 for Rs.1,85,00,000/- in favour of State Bank of India, Boileqgunj which ought to have been filed on or before 30.6.2005 Form No.8 but was actually filed with the Registrar of Companies on 4.8.2006 with the delay for the period from 30.6.2005 to 4.8.2006. The delay has been confirmed by the Registrar of Companies. This Bench is satisfied that the delay was caused due to inadvertence.

THIS BENCH DOTH THEREFORE HEREBY ORDER

That the delay in filing the aforesaid documents by the petitioner company is condoned and the time for filing the same is hereby extended up to 4/8/2006 as prayed subject to the condition that the petitioner company shall pay a cost of Rs.15000/- (Rupees Fifteen thousand only) to the Registrar of Companies and shall file a certified copy of this order pursuant to Company Law Board Regulation, 1991 with the said Registrar of Companies within sixty days from the date of this order who shall take the relevant document on record immediately thereafter.

Signed on this 12th day of January, 2007 at New Delhi.

(VIMLA YADAV)
MEMBER"

A perusal of the aforesaid order clearly shows that the same has been passed in a lackadaisical manner. The order of the CLB is full of factual errors. First of all the CLB has failed to notice that the petitioner under Section 141 for condoning the delay had not been filed by the Company but by the Bank. Even thereafter the Bench has not given any reasons for accepting the application of condonation of delay

except to state that it is satisfied that the delay was caused due to the inadvertence. This was factually incorrect since the case of the Bank was that the appellant Company had purposely delayed the filing of the application despite repeated requests of the Bank.

Sh.Ankush Sood also contends that notice of this application should have been sent to the appellant-Company before deciding the same especially when costs of Rs.15,000/- were imposed upon the appellant.

After going through the legal provisions and the record of the CLB, we are clearly of the opinion that the CLB should have sent notice to the appellant Company. The version given by the Bank should have been verified before the orders were passed. The CLB, as already stated above, has also made factual errors in its order which show total non-application of mind.

However, despite holding so we cannot grant any effective relief to the appellant. The fact is that it was the duty of the appellant to get the charge registered. Though it has been strenuously contended by Sh.Ankush Sood appearing on behalf of the appellant that the registration of the charge could not take place due to the fact that the bank did not provide the necessary documents, no material in this regard has been placed on record except the letter dated 18th January, 2007. The charge was created on 31.5.2005. No communication has been placed before us to show that the appellant Company ever requested the bank for any documents from 31.5.2005 till 18.1.2007. We also feel that in view of the fact that non creation of a charge is an offence punishable under Section 142, a party who is guilty of having

committed an offence cannot be allowed to take advantage of having committed the said offence.

Lastly, the charge now stands registered. It would be totally inequitable to set the clock back. Therefore, though we do not agree with the reasoning of the CLB or the procedure followed by it, the appeal is rejected for the reasons stated hereinabove. No costs.

(Deepak Gupta),
Judge

August 1, 2007.
PV

(V.K. Ahuja)
Judge